

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	January 17, 2019
Time of Incident:	6:50 pm
Location of Incident:	4758 S. Pulaski Road
Date of COPA Notification:	February 27, 2019
Time of COPA Notification:	1:14 pm

On January 17, 2019, police officers were investigating a repast party at the Watra nightclub. In front of the nightclub, accused Officer Rodrigo Lopez (“Officer Lopez”) discharged Oleoresin Capsicum (“OC”) spray at an unknown woman who earlier, according to Officer Lopez, threatened to strike him with a glass bottle. The discharge incident was not reported to COPA until February 27, 2019.

II. INVOLVED PARTIES

Involved Officer #1:	Rodrigo Lopez, Star No. 9161, Employee ID No. [REDACTED] Date of Appointment: August 25, 2003, PO, Unit of Assignment 008/871, DOB: [REDACTED], 1970, male, Hispanic
Involved Sergeant #2:	Jeffrey Chudy, Star No. 1858, Employee ID No. [REDACTED] Date of Appointment: November 29, 2004, Sergeant, Unit of Assignment 008, DOB: [REDACTED], 1976, male, White
Involved Lieutenant #3:	Richard Moravec, Star No. 201, Employee ID No. [REDACTED] Date of Appointment: December 13, 1993, Lieutenant, Unit of Assignment 008, DOB: [REDACTED], 1966, male, White
Involved Individual #1:	Unknown Female

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Rodrigo Lopez	1.It is alleged that you discharged your Oleoresin Capsicum Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50	Sustained/Reprimand

	pm without prior approval from the Superintendent or his designee.	
Sergeant Jeffery Chudy	1. It is alleged that you failed to make a timely report to COPA that Officer Rodrigo Lopez discharged his Oleoresin Capsicum (OC) Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50 pm.	Sustained/Reprimand
Lieutenant Richard Moravec	1. It is alleged that Lieutenant Cascone failed to make a timely report to COPA that Officer Rodrigo Lopez discharged his Oleoresin Capsicum (OC) Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50 pm.	Sustained/Reprimand

IV. APPLICABLE RULES AND LAWS

Rules

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1. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
 2. Rule 6: Disobedience of an order or directive, whether written or oral.
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General Orders

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1. G03-02-01 Force Options (effective, October 16, 2017 – February 29, 2020)
 2. G03-02-05 Oleoresin Capsicum (OC) Devices and Other Chemical Agent Use Incidents (effective, October 16, 2017 – February 29, 2020)
 3. G03-02-02 Incidents Requiring the Completion of a Tactical Report (effective, October 16, 2017 – February 29, 2020)
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V. INVESTIGATION¹

a. Interviews

Officer Rodrigo Lopez² (Officer Lopez) provided a statement to COPA on April 29, 2019. Prior to providing the statement, Officer Lopez reviewed reports relating to the incident as well as his body worn camera (BWC). Also, during a break in the interview, COPA showed Officer Lopez a portion of his BWC. The following is a summary of his statement.

Officer Lopez was on duty at the time of the incident and was working the squadrol. He confirmed that a repast occurred at Watra nightclub and stated he learned that someone was flashing guns at the location on social media. Officer Lopez was a few blocks away with approximately thirty other officers when he heard that assistance may be needed at Watra. Officer Lopez was waiting for a call to see if transport was needed. While in the process of relocating to Watra for a premise check, Officer Lopez received a 10-1 call. Officer Lopez explained that a 10-1 meant that an officer's life was in danger.

When he arrived at Watra, Officer Lopez went inside the club. He described the scene inside the club as chaotic and he observed that between fifty to one hundred civilians were in the club, including children. Officer Lopez also saw twenty to thirty officers inside the club. An officer handed over to Officer Lopez a handcuffed arrestee, whom Officer Lopez began to walk to the squadrol. As he did so, Officer Lopez heard a woman behind him who was following him and making threats. She was holding a broken glass bottle and she stated that if Officer Lopez did not let the detainee go, she was going to throw a bottle in Officer Lopez's face. Officer Lopez stated this made him scared. Officer Lopez estimated that the woman was three to four feet away from him when she was threatening him. Officer Lopez proceeded to put the offender in the squadrol and locked it while also looking to see if the woman was going to throw the bottle.

Officer Lopez stated that when he was placing the detainee inside the squadrol, the squadrol was located across the street from Watra, about 25 feet south of the door. Officer Lopez walked the detainee to the squadrol and then Officer Lopez walked back to the door of the club. When Officer Lopez walked back to the door of the club, the woman with the bottle was outside. Officer Lopez stated that there could have been people behind her. When Officer Lopez approached the woman, he discharged his OC spray at her. Officer Lopez sprayed the OC in a waving motion and deployed the spray for a couple of seconds. Officer Lopez stated that the woman could have had the bottle in the back when he sprayed his OC spray.

Prior to deploying the spray, Officer Lopez did not ask permission of a sergeant, lieutenant, or a superintendent. Officer Lopez stated that he did not get permission because he was in fear of his life.

After a break during the statement, Officer Lopez's counsel stated on the record that Officer Lopez was going to provide clarification regarding the location of where people were and the

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

²Atts. 8 and 9.

mechanics of his OC spraying. Officer Lopez explained that he had “tunnel vision” during the incident but that he only sprayed the woman who threatened him with the bottle. Officer Lopez stated that he chose OC spray to protect himself and other officers. In his mind, the woman was going to throw the bottle in his face, and he feared for his life. Officer Lopez stated that he felt the fear he described before he placed the offender in the squadrol. Officer Lopez further said that he used his OC spray on the woman because she followed him and threatened him but confirmed that he sprayed the woman after he placed the offender in the squadrol and walked back to the club and at that time the woman was no longer following him.

Officer Lopez did not recognize if anyone was screaming or coughing due to his use of force. Officer Lopez did not notice if any other officers reacted to the spray, but he did not react to it. The woman he sprayed ran away. After discharging the spray, Officer Lopez went back to the squadrol to make sure no one had released the detainee.

Twenty minutes later, Officer Lopez went to the 8th District station. He realized that he needed to complete a Tactical Response Report because “he pepper sprayed people.”³ Officer Lopez did not recall what time he completed the report. The Reviewing Supervisor of Officer Lopez’s report was Sergeant Jeffery Chudy. Officer Lopez completed the TRR on his own and stated that Sergeant Chudy did not ask him questions about what happened. Officer Lopez believed that Sergeant Chudy reviewed the BWC with Lopez that night. Officer Lopez also spoke with Lieutenant Moravec that night. With respect to Officer Lopez’s use of force, Lieutenant Moravec asked Officer Lopez if he used the Use of Force Model and Officer Lopez told him that he did.

Sergeant Jefferey Chudy⁴ (“Sergeant Chudy”) provided a statement to COPA on April 30, 2019. The following is a summary of his statement.

Sergeant Chudy was on duty the night of the incident. As a sergeant in the 8th District, he oversees the 20-sector geographic area in the 8th District. Chudy responded to the incident at the Watra nightclub. He was on scene for approximately 30 minutes and then relocated back to the District. Sergeant Chudy was aware of arrests and uses of force that evening.

Sergeant Chudy explained that typically an officer who uses OC spray would notify a dispatcher that OC has been discharged, provide a star number, request a supervisor, get medical attention, if it was needed, and go back to the station to complete any paperwork. The paperwork completed included a TRR. Sergeant Chudy became aware that Officer Lopez discharged his OC once he got back to the station, when Officer Lopez told him that he discharged his OC spray. Sergeant Chudy asked Officer Lopez what happened and told Officer Lopez that he needed to notify OEMC to let them know that the discharged occurred and had Officer Lopez complete a TRR.

Sergeant Chudy stated that his duties, when an officer under his charge completes a TRR include making sure that the TRR is filled out and that the case report and the arrest report are

³ Att. 9, at 4 minutes and 4 seconds.

⁴ Att. 12.

completed. Once Chudy reviews the TRR to ensure that all the pertinent information is included, he sends the TRR to a Watch Operation Lieutenant who provides the final approval.

Sergeant Chudy stated that he reviewed Officer Lopez's TRR that evening and that the above-described process was followed. With respect to the notification required after an officer discharges OC spray, Sergeant Chudy stated that after 1600 hours CPIC must be notified and that prior to 1600 hours, COPA must be notified. Sergeant Chudy did not notify COPA of a discharge of OC Spray because he forgot, and Sergeant Chudy did not believe Lieutenant Richard Moravec notified COPA that night. Sergeant Chudy became aware that COPA had been notified by Lieutenant Moravec when Lieutenant Moravec told him that he did it a few days later but did Sergeant Chudy did not know when COPA had been notified. Sergeant Chudy clarified that it was not his responsibility to notify COPA and that the Watch Commander or a Supervising Lieutenant or above notifies COPA under the Order.

Lieutenant Richard Moravec⁵ ("Lieutenant Moravec") provided a statement to COPA on April 30, 2019. Prior to providing a statement, Lieutenant Moravec reviewed documents relating to the incident that he previously reviewed. The following is a summary of his statement.

Lieutenant Moravec is assigned to the 8th District. He was serving as Watch Commander in the 8th District on the date of the incident. Lieutenant Moravec stated his Watch Commander duties included approving TRRs. He became aware that Officer Lopez discharged his OC spray after the incident when Department members came into the 8th District with arrests and one of the TRRs was Officer Lopez's. Lieutenant Moravec stated that Officer Lopez completed the TRR and that he reviewed and approved the TRR. During his statement, Lieutenant Moravec reviewed Lopez's TRR to refresh his memory. Upon review of the TRR, Lieutenant Moravec determined that the incident required a notification to COPA. Lieutenant Moravec did not notify COPA on the date of the incident. Lieutenant Moravec stated that he notified COPA when he realized that he did not make the notification and confirmed that he made the notification on February 27, 2019. Lieutenant Moravec said that he was delayed in making the notification because he forgot because there were multiple TRRs relating to the incident. Lieutenant Moravec's memory was jogged when he received an email from Force Review notifying him that he failed to make a notification to COPA. Lieutenant Moravec made the notification to COPA via telephone call.

b. Digital Evidence

BWC footage from Officer Lopez⁶ shows Officer Lopez in Watra. Officers are clearing patrons out of the club. Officer Lopez walks further into the club and takes a handcuffed arrestee into custody. Another officer walks up to Officer Lopez and the arrestee and states that the arrestee threw a bottle at him. The arrestee denies that he threw the bottle. Officer Lopez leads the arrestee outside as some patrons outside scream in Officer Lopez's direction. As Officer Lopez leads the arrestee away from the club toward a squadrol, another officer walks up to Officer Lopez and the arrestee to assist with placing the arrestee into the squadrol. As Officer Lopez places the arrestee into the squadrol, a woman can be heard near Officer Lopez threatening to throw a glass.⁷ A

⁵ Att.5.

⁶ Att. 6.

⁷ Att. 6, T00:50:30Z.

second woman walks up to the officers holding a phone and asking what the arrestee did. Officer Lopez explains to the woman that the arrestee is being arrested because he threw a bottle at a police officer.

Once the arrestee is in the squadrol, Officer Lopez walks back toward the club and the patrons standing outside. There is a melee occurring involving some of the patrons. Officer Lopez discharges his OC spray at patrons near him and repeatedly states, "Get out of here."⁸ The group disperses and one man, who appears to receive most of the OC spray, can be seen walking away with his arms outstretched in front of him.

c. Documentary Evidence

The **Original Case Incident Report (OICR)**⁹ dated January 17, 2019, reported by Officer Daniel McAuliffe includes a narrative that, as it relates to this log number, states as follows:

"Lopez was amongst the large crowd attempting to bring an offender to a transport vehicle when multiple unknown offenders began to attempt to free offender from Lopez. [Officer Lopez] discharged his OC Spray in an attempt to counter the offenders. The unknown offenders then fled making good on their escape."

A **Tactical Response Report ("TRR")**¹⁰ completed by Office Lopez reports that he used OC Spray on an unknown person in response to the unknown person threatening him with a broken glass bottle. The force mitigation efforts Officer Lopez indicates were used included member presence, verbal direction, zone of safety and additional unit members. The narrative included in the TRR states that as Officer Lopez and other officers were attempting to place offenders into a squadrol, other persons surrounded the officers demanding that the offenders be freed. One of the persons, an unknown female, approached Officer Lopez and threatened to throw a broken bottle at him. Fearing an imminent battery and injury, Officer Lopez discharged his OC spray.

In the Reviewing Supervisor comments section, Sergeant Chudy wrote, "Based on the situation and talking with P.O. Lopez, R/SGT believes that P.O. Lopez used the appropriate amount of force in order to protect himself and assisting officers and did not violate the department's use of force guidelines."¹¹ Sergeant Chudy did not check the box indicating that a log number was obtained from COPA. The TRR indicates that Sgt. Chudy's review was completed on February 27, 2019.

In the Lieutenant/Incident Commander comments section, Lieutenant Moravec determined that Officer Lopez's actions were within the Department's Use of Force guidelines. Lieutenant Moravec checked the box in the Lieutenant/Incident Commander section that would indicate that notification to COPA was required. Lieutenant Moravec's review was completed on February 27, 2019.

⁸ Att. 6, T00:51:38Z.

⁹ Att. 2.

¹⁰ Att. 3.

¹¹ Att. 8.

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

a. Officer Lopez's discharge of OC Spray was not within Department policy.

Verifiable evidence shows that Officer Lopez did not discharge his OC Spray in a manner that was within policy. The discharge, therefore was a violation of Rule 6. Prior to discharge, Officer Lopez admits that he did not seek authorization. G03-02-05 permits the use of OC Spray against assailants without prior authorization of a Superintendent¹² and Officer Lopez's BWC supports his claim that a woman threatened to assault him while he was placing the arrestee in the squadrol. However, Officer Lopez deployed his OC spray not when the woman was close to him at the squadrol and threatening, but only upon returning to the front of the club 25 feet away, after the woman had already left the side of the squadrol. Moreover, Officer Lopez's BWC does not show any woman threatening Officer Lopez at the time he discharged the spray. Instead, it appears to

¹² G03-02-05 (II) (C) (1).

show him spraying a man, and others near the man, who do not appear to be assaulting Officer Lopez at the time of discharge. COPA finds this allegation to be **Sustained**.

b. Sergeant Chudy failed to timely notify COPA regarding the discharge of OC Spray by Officer Lopez.

In Officer Lopez's TRR, Sergeant Chudy indicated with an X that he had completed his duties as outlined in G03-02-02. However, G03-02-02(V)(A)(8)(c) required that Sergeant Chudy as reviewing supervisor "ensure additional notifications are made consistent with the Department directives entitled: 'Oleoresin Capsicum (OC) or Other Chemical Agent Use Incidents.'" COPA is required to be notified whenever OC Spray is discharged regardless of whether any misconduct was involved.¹³ And, although designated Investigating Supervisor, Lieutenant Moravec was required to notify COPA, Reviewing Supervisor, Sergeant Chudy was required to ensure that notification was made consistent with Department directives, and he did not do so. For these reasons, COPA finds that Sergeant Chudy disobeyed Department directives with respect to timely notifying COPA and violated Rule 6. The allegation against him is **Sustained**.

c. Lieutenant Moravec failed to timely notify COPA regarding the discharge of OC Spray by Officer Lopez.

G03-02-05 states that when an officer discharges OC Spray, the Watch Operations Lieutenant or the investigating supervisor, a member who holds the rank of lieutenant or above from the district of occurrence, will "notify COPA and ensure that a log number is obtained."¹⁴ Implicit in this direction is that the notification be timely. In this case, Lieutenant Moravec became aware of Officer Lopez's discharge of OC Spray the night the incident occurred. However, Lieutenant Moravec did not provide notice to COPA until February 27, 2019. Notification to COPA over thirty days after the OC discharged occurred is not timely notification. COPA finds that Lieutenant Moravec failed to meet the reporting requirements of G03-02-05 and in so doing violated Rule 6. COPA finds that the allegation against him is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Rodrigo Lopez

i. Complimentary and Disciplinary History

Officer Rodrigo Lopez has been a member of the Chicago Police Department since August 25, 2003. Since that time, he has received one Crime Reduction Ribbon; two Crime Reduction Awards; two Attendance Recognition Awards; four Complimentary Letters; four Department Commendations; ten Emblems of Recognition for Physical Fitness; twenty-seven Honorable Mentions; one NATO Summit Service Award and one Presidential Election Deployment Award.

¹³G03-02-05(IV)(E)(2).

¹⁴ G03-02-05 (III)(E)(2).

ii. Recommended Penalty

COPA recommends that Officer Rodrigo Lopez receive a 5 days Suspension. COPA has considered Officer Lopez's complimentary history, which includes significant recognition for his service as well as his lack of disciplinary history, in mitigation. Officer Lopez acknowledged that he did not seek authorization before discharging his OC Spray and stated he did so because he was assailed. However, when Officer Lopez discharged his OC Spray, circumstances did not exist that would exempt him from the authorization requirement. For the foregoing reasons, COPA recommends a Reprimand.

b. Sergeant Jeffrey Chudy**i. Complimentary and Disciplinary History**

Sergeant Jeffrey Chudy has been a member of the Chicago Police Department since December 13, 2013. Since that time, he has received two Crime Reduction Awards; four Attendance Recognition Awards; one Chicago Police Leadership Award; three Complimentary Letters; five Department Commendations; one Deployment Operations Center Award; eight Emblems of Recognition for Physical Fitness; one Field Training Service Award; sixty Honorable Mentions; one Honorable Mention Ribbon Award; one Military Service Award; one NATO Summit Service Award; one Presidential Election Deployment Award; one Unit Meritorious Performance Award.

ii. Recommended Penalty

COPA recommends that Sergeant Jeffrey Chudy receive a Reprimand. COPA has considered Sergeant Chudy's complimentary history, which includes significant recognition for his service as well as his lack of disciplinary history, in mitigation. Sergeant Chudy acknowledged that he did not notify COPA but also stated that it was not his responsibility, to notify COPA. However, as Reviewing Supervisor, Sergeant Chudy had a responsibility to ensure that required notifications associated with the directive relating to OC Spray were made. For the foregoing reasons, COPA recommends that Sergeant Chudy receive a Reprimand.

c. Lieutenant Richard Moravec**i. Complimentary and Disciplinary History**

Lieutenant Richard Moravec has been a member of the Chicago Police department since December 13, 1993. Since that time, he has received one Crime Reduction Ribbon; two Crime Reduction Awards; five Attendance Recognition Awards; four Complimentary Letters; one Democratic National Convention Award; four Department Commendation; fifty-nine Honorable Mentions; one Life Saving Award; one NATO Summit Service Award; and one Presidential Election Deployment Award.

ii. Recommended Penalty

COPA recommends that Lieutenant Richard Moravec receive a Reprimand. COPA has considered Lieutenant Moravec’s complimentary history, which includes significant recognition for his service as well as his lack of disciplinary history, in mitigation. Lieutenant Moravec acknowledged that he did not notify COPA that OC Spray had been discharged until thirty days after the incident. Thirty days after an OC Spray incident is not timely notification. For the foregoing reasons, COPA recommends that Lieutenant Moravec receive a Reprimand.

IX. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Officer Rodrigo Lopez	1.It is alleged that you discharged your Oleoresin Capsicum Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50 pm without prior approval from the Superintendent or his designee.	Sustained/Reprimand
Sergeant Jefferey Chudy	1. It is alleged that Sergeant Chudy failed to make a timely report to COPA that Officer Rodrigo Lopez discharged his Oleoresin Capsicum (OC) Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50 pm.	Sustained/Reprimand
Lieutenant Richard Moravec	1. It is alleged that Lieutenant Moravec failed to make a timely report to COPA that Officer Richard Moravec discharged his Oleoresin Capsicum (OC) Spray into a crowd on January 17, 2019, at the Watra Night Club, 4758 S. Pulaski Road, at approximately 6:50 pm.	Sustained/Reprimand

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

3-20-2023

Date